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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,928	12/15/2000	Steven Ray Stopper	15088	1071

7590 05/30/2002

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EXAMINER

GOFF II, JOHN L

ART UNIT	PAPER NUMBER
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1733

4

DATE MAILED: 05/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/737,928

Applicant(s)

STOPPER, STEVEN RAY

Examiner

John L. Goff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- ☐ Interview Summary (PTO-413) Paper No(s) _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-17, drawn to a personal care product, classified in class 428, subclass 411.1.
 - II. Claims 18-22, drawn to a method for making a personal care product, classified in class 156, subclass 196.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process such as one where preformed layers of film and foam are laminated through the application of heat. It is noted a product defined by the process by which it can be made is still a product claim (In re Bridgeford, 357 F.2d 679, 149 USPQ 55 (CCPA 1966)) and can be restricted from the process if the examiner can demonstrate that the product as claimed can be made by another materially different process; defining the product in terms of a process by which it is made is nothing more than a permissible technique that applicant may use to define the invention.

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3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mr. Stephen Flack on 4/11/02 a provisional election was made with traverse to prosecute the invention of II, claims 18-22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Upon the indication of allowable subject matter, rejoinder will be considered.

Drawings

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "10" has been used to designate both the monolayer film in Figure 1 and the storage roll in Figure 3. Reference characters 11-16 also represent different parts with the same number. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 18 and 20 shown in Figures 2 and 3. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office

action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 18-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. In claim 18, the phrase "extruding a film composition and co-extruding therewith" is unclear and confusing. Does it mean a film and foam composition are co-extruded? It is suggested to change "extruding a film composition and co-extruding therewith" to - - co-extruding a film composition with a - -. This issue should be clarified and reworded as appropriate.

10. In claim 21, the phrase "two parts" is unclear and confusing. It is uncertain what is meant by the word "parts". Does it mean the co-extruded film and foam composition? It is suggested to change "two parts" to - - the film and foam - -. This issue should be clarified and reworded as appropriate.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claim 18 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by the Derwent abstract of DE 19653608.

The Derwent abstract of DE 19653608 is directed to forming foamed films for hygiene articles by simultaneously co-extruding a carrier film with a foamed layer. The Derwent abstract of DE 19653608 teaches a carrier film co-extruded with a foamed layer of low-density polyethylene, very low-density polyethylene, and/or polypropylene.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Derwent abstract of DE 19653608 in view of Datta et al (U.S. Patent 5,695,376) and Hunter et al (U.S. Patent 5,810,800).

As shown above, the Derwent abstract of DE 19653608 teaches a carrier film co-extruded with a foamed layer of low-density polyethylene, very low-density polyethylene, and/or polypropylene to form a composite material (foamed film). The Derwent abstract of DE 19653608 is silent on a teaching of laminating a nonwoven layer to either side of the composite material or thermoforming the composite. However, it is well known in the art to form personal

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care products with an outer nonwoven layer to provide a cloth-like outercover for contacting the skin as shown by Datta et al and Hunter et al. Datta et al and Hunter et al further show the well-known technique in the art of thermoforming the personal care product into a cup-like shape.

Datta et al are directed to thermoformed, cloth-like three-dimensional articles such as personal care products. Datta et al teach a composite material with a nonwoven layer atop a film layer. The film layer gives the composite a liquid barrier property, while the nonwoven layer gives the composite a cloth-like texture (Figure 1 and Column 1, lines 66-67 and Column 2, lines 1-2). Further, the composite is thermoformed through heat and pressure to a cup-like shape that will conform to the user's movements (Figure 1 and Column 1, lines 48-53 and Column 2, lines 8-18). The composite may be sealed adhesively, thermally, or ultrasonically (Column 3, lines 4-15).

Hunter et al are directed to disposable absorbent articles. Hunter et al teach a cup shaped article for reducing leakage and conforming to a user's movements (Figure 1 and Column 1, lines 19-21). Hunter et al teach a nonwoven topsheet useful for reducing excessive discomfort when the article is in contact with the wearer's skin (Column 5, lines 24-27 and 30-34).

Regarding claim 19, it would have been obvious to one of ordinary skill in the art at the time the invention was made to laminate a nonwoven layer to either side of the composite material taught by the Derwent abstract of DE 19653608 to provide a cloth-like outercover for contacting the user's skin as was well known in the art and shown by Datta et al and Hunter et al.

Regarding claims 20-22, it would have been obvious to one of ordinary skill in the art at the time the invention was made to thermoform and ultrasonically seal the composite taught by

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the Derwent abstract of DE 19653608 to form a composite shaped to a user's movement as was well known in the art and shown by Datta et al and Hunter et al.

Conclusion

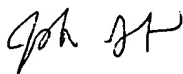
15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Heider (U.S. Patent 4,244,900) directed to the co-extrusion of a film and foam (Column 2, lines 14-20). Ellis et al (U.S. Patent 4,701,177) direct to a personal care product having an outer-cover formed of a film and a nonwoven web (Column 4, lines 41-46).

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **John L. Goff** whose telephone number is **703-305-7481**. The examiner can normally be reached on M-Th (8 - 5) and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John L. Goff
May 28, 2002



Michael W. Ball
Supervisory Patent Examiner
Technology Center 1700